

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Sudeen G. Kelly.

Pacific Gas & Electric Company

Docket No. ER05-1286-000

ORDER ACCEPTING AND SUSPENDING INTERCONNECTION AGREEMENT
AND ESTABLISHING HEARING AND SETTLEMENT PROCEDURES

(Issued September 30, 2005)

1. In this order, we accept for filing a revised Interconnection Agreement (IA)¹ between Pacific Gas and Electric Company (PG&E) and Modesto Irrigation District (Modesto), and suspend it for a nominal period, to become effective upon completion of Modesto's transfer from PG&E to the Western Area Power Administrations' Sub-Control Area within the Sacramento Municipal Utility District's control area (Western/SMUD), subject to refund. We also establish hearing and settlement judge procedures.

I. Background

2. Modesto is an irrigation district that supplies electric power and energy and operates within the California Independent System Operator Corporation's (CAISO) control area. Modesto is also a wholesale customer of PG&E, and PG&E is Modesto's CAISO scheduling coordinator. Earlier this year, Modesto decided to incorporate its operations within the Western/SMUD control area. PG&E states that this revised, unexecuted IA is necessary since PG&E will no longer be responsible for providing the services associated with the operation of Modesto's control area.

3. PG&E states that the revised IA includes: (1) updated provisions to reflect new control area circumstances; (2) removal of PG&E's power sales and ancillary service provisions; (3) provisions declaring that Modesto's existing transmission service (including its Existing Transmission Contract rights), on PG&E's transmission system, originally scheduled by PG&E and more recently scheduled by CAISO through PG&E acting as Scheduling Coordinator, will no longer be scheduled with or through PG&E; (4) revision of Control Area Operator provisions to reflect the fact that PG&E no longer

¹ To be designated as PG&E Second Revised PG&E Rate Schedule FERC No. 116.

is a Control Area Operator, but continues to be the transmission system owner; and, (5) removal of Modesto's transmission service provisions. PG&E states that the provisions that are not materially changed relate to the maintenance and coordination of the Modesto and PG&E transmission systems, subject to PG&E's responsibilities to CAISO as host Control Area Operator.

4. PG&E requests an effective date of October 3, 2005, two days after PG&E states it expects Modesto to begin operations under SMUD control areas. However, PG&E states that if Modesto advises of a delay until December 1, 2005, PG&E requests an effective date of no later than December 1, 2005.

II. Notice of Filing and Responsive Pleadings

5. Notice of PG&E's filing was published in the *Federal Register*, 70 Fed. Reg. 48,696 (2005), with interventions and protests due on or before August 24, 2005. Modesto filed a motion to intervene and protest. The City and County of San Francisco (San Francisco) filed a notice of intervention and the Northern California Power Agency filed a motion to intervene.

6. Modesto asserts that it has been negotiating with PG&E to develop a successor IA to take effect upon Modesto's integration into Western/SMUD. Modesto argues that PG&E's unilateral filing was premature, contains numerous errors, and does not reflect the parties' ongoing discussions. Modesto also asserts that PG&E erroneously proposes to terminate its Reserved Transmission Service. Modesto submits an alternative interconnection agreement for consideration. Modesto asserts that due to the change in control areas, it will only require a "wires-only" interconnection agreement from PG&E and that many of PG&E's proposed provisions are unnecessary.

7. Modesto requests that any successor IA be made effective as of the date Modesto transfers to the Western/SMUD control area.

8. In its answer, PG&E asserts that changing control areas will require many changes in the IA and that it will also require coordination in the two adjoining control areas, which is reflected in the new IA provisions. PG&E argues that with recent changes in the energy markets, Modesto no longer needs Reserved Transmission Service, and therefore, its removal from the IA is appropriate. PG&E also requests a revised effective date on the earlier of December 1, 2005, which is the date PG&E anticipates that Modesto will move to the Western/SMUD control area, or the date of Modesto's transfer.

9. In its answer, Modesto argues that PG&E has failed to adequately respond to its protest and demonstrate why the typical interconnection agreement will be needed after Modesto moves to SMUD.

III. Discussion

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2005), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept PG&E's and Modesto's answers because they have provided information that has assisted us in our decision-making process.

11. PG&E's proposed IA raises issues of material fact that cannot be resolved based on the record before us, and are more appropriately addressed in the hearing and settlement judge procedures ordered below.

12. Our preliminary analysis indicates that PG&E's filing has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will accept PG&E's proposed rate schedule for filing, suspend it for a nominal period, make it effective upon completion of Modesto's transfer from PG&E to SMUD, subject to refund, and set it for hearing and settlement judge procedures.

13. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.² If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.³ The settlement judge shall report to the Chief Judge and the Commission within 60 days of the date of this order concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

² 18 C.F.R. § 385.603 (2005).

³ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience (www.ferc.gov – click on Office of Administrative Law Judges).

The Commission orders:

(A) PG&E's proposed IA is hereby accepted for filing, suspended for a nominal period, to become effective upon completion of Modesto's transfer from PG&E to Western/SMUD, as requested by Modesto, subject to refund as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held concerning PG&E's proposed IA. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2005), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(D) Within sixty (60) days of the date of this order, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, N.E., Washington, DC 20426. Such a conference shall be held for the purpose of

establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.